

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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US BANK NATIONAL ASSOCIATION, as
Trustee, Successor in Interest to
Wachovia Bank, National Association as
Trustee for Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2005-AR2 at 4801
Frederica Street, Owensboro, KY 42301,
et al.,

Plaintiffs and Counter Defendants,
v.

VILLA VECCHIO CT. TRUST,

Defendant and Counter Claimant.

Case No. 2:17-cv-00143-MMD-VCF

ORDER

I. SUMMARY

This is one of hundreds of cases filed in this district seeking to quiet title following a foreclosure sale held by a homeowners' association for unpaid dues. Specifically, Plaintiffs US Bank National Association, as Trustee, Successor in Interest to Wachovia Bank, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass Through Certificates, Series 2005-AR2 at 4801 Frederica Street, Owensboro, KY 42301 ("U.S. Bank") and Wells Fargo Bank, N.A. ("Wells Fargo" and jointly with U.S. Bank, "Plaintiffs") sued Defendant Villa Vecchio Ct. Trust ("Vecchio"),¹ contending that three deeds of trust they are the beneficiaries of (the "DOT(s)") continue to encumber 5147 Villa Vecchio Ct., Las Vegas, Nevada 89141, APN 176-36-514-048 (the "Property"); Vecchio counters it owns the Property free and clear of the DOT. (ECF Nos. 1, 52 at 5-7.) Before the Court are the parties' competing motions for summary judgment (ECF Nos. 105, 107) and Vecchio's motion to reopen discovery (ECF No. 106)

¹Other Defendants were previously dismissed by stipulation. (ECF No. 48.)

1 following the United States Court of Appeals for the Ninth Circuit's order vacating the
2 Court's prior judgment and remanding for further proceedings consistent with *U.S. Bank,*
3 *N.A. v. Thunder Properties, Inc.*, 503 P.3d 299 (Nev. 2022).² (ECF Nos. 92, 93, 94, 98,
4 102, 104.) Because Vecchio did not meet and confer before seeking to reopen discovery,
5 has not met its burden to show that the applicable statute of limitations bars this case, the
6 undisputed evidence shows that the prior homeowners sufficiently tendered—and as
7 further explained below—the Court will deny Vecchio's pending motions and grant
8 Plaintiffs' Motion.

9 **II. BACKGROUND**

10 These background facts are undisputed. (ECF Nos. 113 at 3 ("Vecchio does not
11 contest the recorded documents set forth by Wells Fargo regarding the Deed of Trust, the
12 HOA, and ACS' Notices regarding the eventual HOA Sale."), 116 at 6-7 (describing facts
13 regarding Vecchio's 2012 bankruptcy proceeding as undisputed).) Boris and Vongmala
14 Zheleznyak ("Borrowers") bought the Property (through a trust) in 2004. (ECF No. 107-
15 2.) They then quickly refinanced, taking out a loan secured by three deeds of trust on the
16 Property. (ECF Nos. 107-3, 107-4, 107-5.) While all three deeds of trust list Wells Fargo
17 as the beneficiary, the loan and first deed of trust were later assigned to U.S Bank. (ECF
18 No. 107-6.)

19 In 2010, the Borrowers stopped paying their homeowners' association dues on the
20 Property. (ECF No. 107-8 at 6.) So their homeowners' association recorded a notice of
21 delinquent assessment lien against the Property in September 2010. (ECF No. 107-11.)
22 At this time, the Borrowers owed \$600 of past-due assessments. (ECF Nos. 107-10 at 6.)
23 The homeowners' association also recorded a notice of default and election to sell in
24 December 2010. (ECF No. 107-12.)

25 The homeowners' association used Complete Association Management Company
26 ("CAMCO") to communicate with homeowners, and accept and process payments from
27

28 ²The parties filed responses and replies to the pending motions. (ECF Nos. 113,
115, 116, 117, 118, 119.)

1 them. (ECF No. 107-8 at 4.) Yvette Saucedo was designated to testify about CAMCO's
2 practices as pertinent to the Property. (*Id.* at 3.) And she testified that when borrowers
3 like the Borrowers made past due payments, CAMCO would first apply them to the oldest
4 past due assessments. (*Id.* at 5-6.) She also testified that Borrowers made partial
5 payments on their past due assessments totaling about \$900 between May and
6 September 2011. (*Id.* at 8.)

7 Despite receiving these partial payments and applying them to the oldest past-due
8 assessments (*see id.* at 5-6, 8), the homeowners' association recorded a notice of
9 trustee's sale against the Property on October 26, 2011. (ECF No. 107-13.) The
10 homeowners' association then sold the Property for \$5900 to Vecchio at a foreclosure
11 sale held January 17, 2012 (the "HOA Sale"). (ECF No. 107-14.)

12 Vecchio filed for Chapter 11 bankruptcy protection in May 2012. (ECF Nos. 105 at
13 4-5, 116 at 6-7; *see also* ECF No. 105-10.³) Vecchio's initial petition listed U.S. Bank as
14 a creditor regarding the Property, stating that the amount of its claim was 'unknown,' but
15 also 'secured' in the amount of \$403,800.00. (*Id.* at 5.) Later in May, Vecchio filed its
16 bankruptcy schedules, again listing the amount of the secured interest in the Property as
17 'unknown' (ECF No. 105-12 at 4), but later listed U.S. Bank as having a first mortgage in
18 the amount of \$392,800 on the Property in a section of the schedules for secured claims
19 (*id.* at 8). U.S. Bank later filed a proof of claim in Vecchio's bankruptcy case regarding the
20 loan on the Property. (ECF No. 105-13.)

21 Plaintiffs filed this case on January 17, 2017, bringing a claim for quiet title—that
22 the DOTs continue to encumber the Property—among other claims. (ECF No. 1.) Vecchio
23 answered and counterclaimed for quiet title—that the DOTs were extinguished by the
24 HOA Sale. (ECF No. 52.) Plaintiffs answered Vecchio's counterclaims, asserting tender
25 as one of their affirmative defenses. (ECF No. 55 at 5-6.)

26
27 ³The Court takes judicial notice of this and other documents filed in Vecchio's
28 bankruptcy proceeding, as courts may take, "judicial notice of undisputed matters of
public record, *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001), including
documents on file in federal or state courts." *Harris v. Cnty. of Orange*, 682 F.3d 1126,
1132 (9th Cir. 2012).

III. DISCUSSION

The Court first addresses Vecchio's motion to reopen discovery, then Vecchio's statute of limitations argument, and then Plaintiffs' homeowner tender argument.

A. Motion to Reopen Discovery

Vecchio filed a motion to reopen discovery solely so that it may rely on Vecchio's 2012 bankruptcy petition and related documents that it never disclosed in this case for its statute of limitations argument in its motion. (ECF No. 106 at 2-3.) The Court denies this motion as moot because the Court takes judicial notice of these documents as described above. And Plaintiffs also rely on the same documents in response to Vecchio's motion. (ECF No. 116 at 6-7.) But even were the Court not to deny this motion as moot, the Court would deny it because Vecchio admits it violated the disclosure requirements under the Federal Rules of Civil Procedure and the local rules requiring parties to meet and confer before filing discovery motions—itsself adequate grounds to deny the motion. See LR IA 1-3(f)(4) ("Failure to make a good-faith effort to meet and confer before filing any motion to which the requirement applies may result in denial of the motion."); LR 26-6(c) ("Discovery motions will not be considered unless the movant (1) has made a good faith effort to meet and confer as defined in LR IA 1-3(f) before filing the motion, and . . .").

B. Statute of Limitations

The Court previously held that this case was timely filed because a five year statute of limitations applied, and the limitations period began running the day after the HOA Sale. (ECF No. 82 at 13-14.) But it is now clear that a four-year statute of limitations applies to this case, and the limitations period does not necessarily begin running from the date of the HOA Sale. See *Thunder Properties*, 503 P.3d at 306-07. Instead, the limitations clock begins running when the lienholder "has something closely analogous to 'notice of disturbed possession,' such as repudiation of the lien." *Id.* at 306. Both in its motion and in response to Plaintiffs' motion, Vecchio only points to one potential trigger date—the date that Vecchio filed its bankruptcy petition in May 2012. (ECF Nos. 105 at 8-10, 113 at 5-8.) Plaintiffs counter that this cannot have set the limitations clock running

1 because Vecchio did not repudiate the lien in its bankruptcy petition or related filings, in
2 which Vecchio stated U.S. Bank had a secured lien on the Property, merely challenging
3 the amount of the lien. (ECF No. 116 at 15-17.) The Court agrees with Plaintiffs.

4 Because the “bar of a statute of limitations is an affirmative defense,” Vecchio must
5 “prove every element of the defense.” *Fruit & Vegetable Packers & Warehousemen Loc.*
6 *760 v. Morley*, 378 F.2d 738, 746 (9th Cir. 1967); *see also Nevada Ass’n Servs., Inc. v.*
7 *Eighth Jud. Dist. Ct.*, 338 P.3d 1250, 1254 (Nev. 2014) (stating that the party who raises
8 an affirmative defense bears the burden of proving its applicability). Vecchio has not
9 shown it is entitled to summary judgment that it repudiated the applicable liens in its 2012
10 bankruptcy petition and related documents.

11 Indeed, the evidence shows the opposite—that Vecchio affirmed the existence of
12 U.S. Bank’s lien when it filed for bankruptcy. As mentioned above, it is undisputed that
13 Vecchio’s initial petition listed U.S. Bank as a creditor regarding the Property, stating that
14 the amount of its claim was ‘unknown,’ but also ‘secured’ in the amount of \$403,800.00
15 (ECF No. 105-10 at 5), and in the corresponding schedules, Vecchio listed U.S. Bank as
16 having a first mortgage in the amount of \$392,800 on the Property in a section of the
17 schedules for secured claims (ECF No. 105-12 at 8). Vecchio’s bankruptcy filings did not
18 set the limitations clock running because Vecchio affirmed, instead of repudiated, the
19 existence of the lien in them. *See Prof-2013-M4 Legal Title Tr. IV v. Spinnaker Point Ave.*
20 *Tr.*, Case No. 2:17-cv-00445-APG-EJY, 2023 WL 3937899, at *3 (D. Nev. Feb. 22, 2023)
21 (making a similar finding). And because these filings did not set the clock running—and
22 Vecchio points to no other affirmative action that could have—Vecchio has not met its
23 burden to show that Plaintiffs’ quiet title claim is time-barred. *See id.* (finding that the
24 plaintiff’s “declaratory relief claim therefore is timely because there is no evidence the
25 defendants affirmatively repudiated the lien more than four years prior to [the plaintiff]
26 filing this lawsuit.”).

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1 **C. Homeowner Tender**

2 That brings the Court to Plaintiffs' core argument—that the DOTs continue to
3 encumber the Property because the Borrowers tendered more than the superpriority
4 amount before the HOA Sale. (ECF Nos. 107 at 10-15, 116 at 9-15.) Vecchio does not
5 even oppose this argument, instead doubling down on its statute of limitations argument.
6 (ECF Nos. 113 at 9 (“As noted by Wells Fargo in the Motion, the Borrowers previously
7 made payments which, after being processed by ACS, were sent, in part, to the HOA for
8 an application to the previously missed assessments.”).) And Vecchio does not dispute
9 the facts described above pertinent to Plaintiffs' homeowner tender argument. (*Id.*)

10 “The homeowner has the ability to cure a default as to the superpriority portion of
11 an HOA lien.” 9352 *Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 459 P.3d 227, 232 (Nev.
12 2020). And while *Cranesbill* provides a framework for determining how to infer the intent
13 of the pertinent homeowner, *see id.* at 231-32, that framework is unnecessary here
14 because the undisputed evidence before the Court shows that Borrowers tendered more
15 than the superpriority amount, and those amounts were applied by the homeowners'
16 association's agent to the oldest past-due assessments. (ECF No. 107-8 at 5-6, 8.)
17 Because Borrowers tendered a more-than-adequate amount, the HOA Sale was void.
18 *See Cranesbill*, 459 P.3d at 228-31.

19 Plaintiffs are accordingly entitled to judgment on their quiet title claim and a
20 declaration that the DOTs continue to encumber the Property. The Court will dismiss
21 Plaintiffs' remaining claims as moot.

22 **IV. CONCLUSION**

23 The Court notes that the parties made several arguments and cited several cases
24 not discussed above. The Court has reviewed these arguments and cases and
25 determines that they do not warrant discussion as they do not affect the outcome of the
26 motions before the Court.

27 It is therefore ordered that Vecchio's motion for summary judgment (ECF No. 105)
28 is denied.

1 It is further ordered that Vecchio's motion to reopen discovery (ECF No. 106) is
2 denied.

3 It is further ordered that Plaintiffs' motion for summary judgment (ECF No. 107) is
4 granted.


5 It is further ordered that the DOTs continue to encumber the Property as specified
6 herein.

7 It is further ordered that Plaintiffs prevail on their quiet title claim, and on Vecchio's
8 counterclaims for quiet title.

9 It is further ordered that Plaintiffs' remaining claims are dismissed as moot
10 considering the Court's rulings herein.

11 The Clerk of Court is directed to enter judgment accordingly—in Plaintiffs' favor
12 and against Vecchio—and close this case.

13 DATED THIS 9th Day of January 2024.

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16 MIRANDA M. DU
17 CHIEF UNITED STATES DISTRICT JUDGE
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